



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MAR 21 2011

Neil Reiff, Esq.
Sandler, Reiff & Young, P.C.
300 M Street, SE, Suite 1102
Washington, DC 20023

RE: MUR 6322
Square, Inc.

Dear Mr. Reiff:

On July 12, 2010, the Federal Election Commission notified your client of a complaint alleging violations of the Federal Election Campaign Act of 1971, as amended. On March 15, 2011, the Commission, on the basis of information in the complaint and information provided by your client, exercised its prosecutorial discretion and dismissed the complaint. *See Heckler v. Chaney*, 470 U.S. 821 (1985). Accordingly, the Commission closed its file in this matter.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66132 (Dec. 14, 2009). The Factual and Legal Analysis, which explains the Commission's determination, is enclosed for your information.

If you have any questions, please contact Joshua B. Smith, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

Roy Q. Lockett
Acting Assistant General Counsel

Enclosure
Factual and Legal Analysis

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**FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS**

Respondent: Square, Inc.

MUR: 6322

I. INTRODUCTION

This matter was generated by a complaint filed with the Federal Election Commission ("Commission") by Floyd D. Ferrell, alleging possible violations of the Federal Election Campaign Act of 1971, as amended ("the Act") and the Commission's regulations, by Square, Inc. *See* 2 U.S.C. § 437g(a)(1).

II. FACTUAL AND LEGAL ANALYSIS

A. Background

Tommy Sowers was a Democratic candidate for Congress from Missouri's 8th District.¹ On June 8, 2010, the Sowers campaign committee hosted a fundraiser in Washington, D.C. Several notable Democratic politicians attended the event, along with Jack Dorsey, the CEO of Square. Square is a software company founded in February 2009 by Jack Dorsey. *See* <https://squareup.com/about>. The company manufactures small, cube-shaped credit card readers that plug into the headphone ports in cell phones. *Id.* The devices allow merchants to accept payment for goods or services instantly over a cell phone network. *See* <https://squareup.com/-about>.

The Committee's announcement publicizing the June 8 fundraiser contains the date, time, and location of the fundraiser, and lists Jack Dorsey as attending the event and as the founder of Twitter. *See* Complaint at Ex. 2, 3; *see also* <http://www.sowersforcongress.com/page/s/-square>. Further, in the bottom right-hand corner of the announcement, there is a picture of the Square payment processing device

¹ Mr. Sowers lost the general election.

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1 with Square's name, along with the statement: "We're also launching Square in DC! The
2 new application by the founder of Twitter that allows credit card transactions from your
3 mobile phone." See Complaint at Ex. 2. Additionally, the invitation states that attendees
4 should "RSVP now & pay at the door w/ SQUARE." *Id.* Near the bottom, the invitation
5 gives attendees the ability to choose a cell phone operating system (Android or iPhone) if
6 the attendee would like a Square card reading device. *Id.*

7 The complaint also includes a news article that features promotional material,
8 allegedly distributed by the Committee, which contains a photo of the candidate, the
9 campaign logo, and the statement "The Tommy Sowers campaign is using Square and
10 launching it in DC. What better way to unveil the future of grassroots fundraising than
11 through a fundraiser for a true grassroots candidate. Square is the new application by the
12 founder of Twitter that allows credit card transactions from your mobile phone. Tuesday,
13 June 8 5:30 - 7:30 PM @ Local 16 1602 U St. NW. RSVP & for more details:
14 www.sowersforcongress.com/square2." See Complaint at 2; Complaint Ex. 3.
15 Additionally, Jack Dorsey wrote about the fundraiser on his Twitter account. See
16 <http://goo.gl/AlkHu> (posted June 8, 2010, 4:53 PM) (last visited December 7, 2010)
17 ("At #sqdc with @crazybeb for @Sowers and @Square. Come by and say hi! Local
18 16.").

19 Square provided its mobile credit services to the Committee during the 2010
20 election cycle. See Response at 2. To use the Square service, the merchant must first
21 download Square's free application to a cell phone or iPad. See [https://squareup.com/get-](https://squareup.com/get-started)
22 started. The merchant then attaches Square's credit card reader to a cell phone, and the
23 buyer swipes a credit card through the reader. After swiping the card, the buyer signs the

1 transaction receipt on the phone using his or her finger. *See* <https://squareup.com/about>.
2 Square distributes the readers for free and does not charge a monthly fee or require a
3 merchant account. *See* <https://squareup.com/features>. Instead, the merchant pays Square
4 a percentage of each transaction amount. *Id.* Merchants are not required to have the card
5 reader to use Square's payment processing service because the merchant can manually
6 run the credit card information through Square's cell phone application, but Square
7 charges more for non-swiped transactions. *Id.* Although Square distributes the device for
8 free, at the time of the fundraiser Square admittedly confronted a "big hardware shortage"
9 and struggled to meet the demand for its readers. *See* Letter from Jack Dorsey, *The*
10 *Home Stretch*, SQUARE, INC. (June 18, 2010), <http://goo.gl/eNkZM>. *Id.*

11 In response, Square maintains that the Committee paid for all of the fundraiser's
12 expenses. *See* Response at 2. Respondent also asserts that its only involvement was as a
13 commercial vendor to the Committee, and that Square did not "approve or comment on"
14 any Committee promotional material. *Id.* Further, even though Jack Dorsey was listed as
15 attending the event, the response insists that he was involved in the event as a personal
16 supporter, and he appeared in his personal capacity. *Id.*

17 The response also asserts that the Committee referenced Square's name with
18 respect to Square's status as a commercial vendor to the Committee and to draw attention
19 to an innovative technology that the Committee uses for fundraising operations, and not
20 to encourage contributions. *See* Response at 2-3. Respondent argues that using its name
21 in an advertisement is akin to the Committee revealing that it accepts contributions via
22 MasterCard, Visa, or ActBlue, because Square is merely a "conduit" for contributions.
23 *Id.* Finally, the response argues that even if the use of Square was a violation of the Act,

1 it was a *de minimis* violation because the event raised only \$5,574 in contributions. *See*
2 Response at 4. Respondent also states the Committee paid Square the full market value
3 for use of its services. *Id.* at 3. The Committee reported contributions totaling \$2,950 on
4 June 8, 2010, the day of the fundraiser, and \$10,000 on June 9, 2010, the day after the
5 fundraiser. It is possible that the Committee received contributions from sources other
6 than the June 8 fundraiser on those days.

7 **B. Analysis**

8 The complaint alleges that: (1) the references to Square and the Square payment
9 processing device in the Committee's fundraiser announcement; (2) a speech made by
10 Dorsey at the fundraiser in which Dorsey allegedly endorsed Tommy Sowers and the
11 Committee's use of Square; (3) and the provision of Square card readers to the
12 Committee to distribute at the fundraiser, constitute impermissible uses of corporate
13 resources to engage in fundraising activities. The Complaint also alleges that Square
14 gave, and the Committee accepted, prohibited contributions when Square furnished the
15 Committee with the card reader devices.

16 Under the Act and Commission regulations, corporations are prohibited from
17 making a contribution to a candidate's committee in connection with a Federal election,
18 and candidates are prohibited from accepting or receiving corporate contributions. *See*
19 2 U.S.C. § 441b(a); 11 C.F.R. § 114.2(b)(1). A "contribution" includes "any gift,
20 subscription, loan, advance, or deposit of money or anything of value made by any
21 person for the purpose of influencing any election for Federal office." 2 U.S.C.
22 § 431(8)(A)(i) and 11 C.F.R. § 100.52(a); *see also* 2 U.S.C. § 441b(b)(2) and 11 C.F.R.

1 § 114.2(b)(1). "Anything of value" includes all in-kind contributions, including the
2 provision of goods or services without charge or at a charge that is less than the usual and
3 normal charge. *See* 11 C.F.R. § 100.52(d)(1). Because the Act and Commission
4 regulations prohibit corporations from contributing anything of value to committees, or
5 using their resources to facilitate contributions to committees, a donation by a corporation
6 of its trademark to a committee (for example, to indicate the corporation's support for a
7 candidate) would constitute an impermissible corporate contribution. 2 U.S.C. § 441b(a)
8 and 11 C.F.R. 114.2(f). The Commission has previously considered corporate names and
9 trademarks to be things of value. *See* MUR 6110 (Obama Victory Fund) Senate Realty
10 Corporation Factual and Legal Analysis; MUR 5578 (Wetterling for Congress) First
11 General Counsel's Report.

12 Here, the available information indicates that the fundraiser announcement
13 featured a picture and description of the Square card reader, and it notified viewers that
14 the fundraiser was serving as the "launch" of Square in Washington, D.C. The
15 announcement also promised contributors their own Square device, even though the
16 Square reader was difficult to obtain at the time of the fundraiser. Further, Square's role
17 at the event appears to have been more than a mere portal for contributions, like
18 MasterCard or Visa, given that the devices were distributed to the fundraiser attendees to
19 keep and use apart from contributing to the Committee, the event appears to have been a
20 "launch" event for Square, and Dorsey's Twitter post can be read to suggest he was
21 appearing both as an individual and as a corporate representative. However, the
22 fundraiser apparently raised only \$5,574, and Square offers the devices free to the public,
23 thus making it difficult to assess their value. Under these circumstances, further use of

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1 the Commission's resources for an investigation is not warranted. Accordingly, the
2 Commission has determined to exercise its prosecutorial discretion and dismiss the
3 allegations that Square, Inc. violated 2 U.S.C. § 441b(a) and 11 C.F.R. § 114.2(f) by
4 facilitating the making of contributions, and violated 2 U.S.C. § 441b(a) in connection
5 with the provision of Square card reader devices to Tommy Sowers for Congress. *See*
6 *Heckler v. Chaney* 470 U.S. 821, 831 (1985).

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